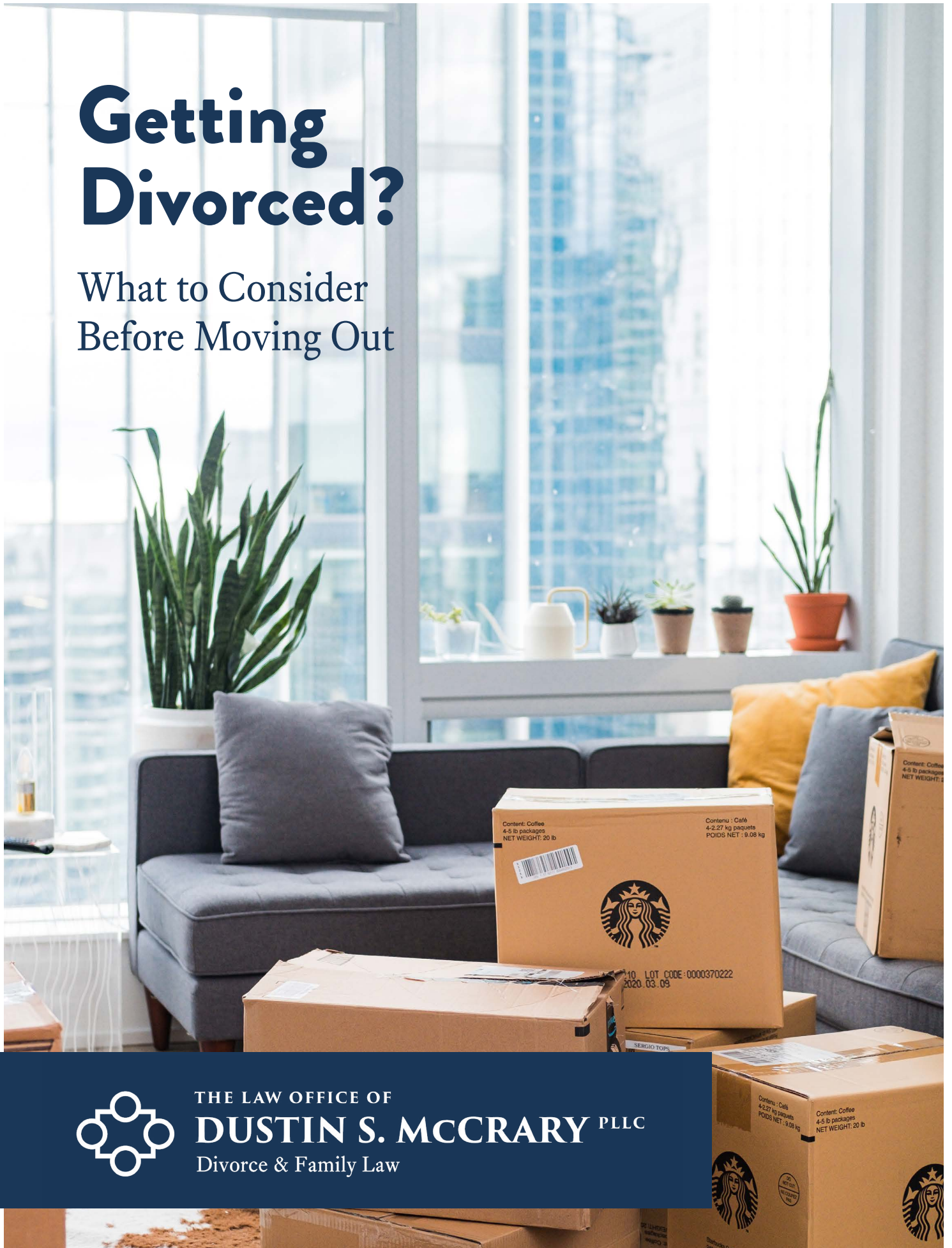


Getting Divorced?

What to Consider Before Moving Out



THE LAW OFFICE OF
DUSTIN S. MCCRARY PLLC
Divorce & Family Law



Life is full of change. Sometimes, the changes are unexpectedly wonderful, and on other occasions, change can be quite difficult.

For many, at least initially, the end of a marriage most certainly falls into the second category. When you realize your marriage is coming to an end, it is probably true that on some level, you may feel a certain amount of relief, particularly if your relationship has been struggling for some time. Even so, you're also likely to feel anger, pain, confusion, and possibly even a desire to escape the situation.

This desire to escape can lead to the decision to take actions that may later be regretted — including among others, the decision to leave the marital home — the place where you and your spouse lived together as a family. While every divorce case is different, there are several considerations that may be helpful for anyone who is contemplating a move of this nature.

LEGAL CONCERNS ABOUT LEAVING



The end of a marriage can cause stress on a number of levels. Continuing to live in a home after you have realized that divorce is the best path forward is certainly not easy. Without question, it can be stressful to share a space in which you attempt to avoid each other but inevitably run into conflict throughout the day, along with the stress of having to put on a happy face for your children. It is not unreasonable to assume that living in different homes would relieve some of this tension. Moving out of the home suddenly and impulsively is usually not the answer, however, absent any concerns of domestic violence that may exist.

From a legal perspective, it's important to understand that simply leaving the marital home without taking steps to legally separate might be interpreted as abandonment of the other spouse. Under North Carolina law, abandonment is considered a type of marital misconduct by the courts, and is determined by the facts and circumstances of each particular case. Generally, it must have occurred for a period of six months or more, and be an intentional absence of presence, support, and care without a just cause or excuse. In other words, leaving the home without taking steps to ensure a legal separation in which you address

matters of ongoing financial support, care for your children, and other important matters could place you at risk of being accused of abandonment.

If you are found to have abandoned the marital home, that decision can have any number of negative effects on your divorce case, including impacting alimony, property division, and child custody arrangements. In some of the more extreme cases of abandonment, a court may not only prevent the offending spouse from having custody, it may also terminate the parent's parental rights, if it finds that doing so would be in the best interest of the children.

Does this mean that after you and your spouse have made the decision to divorce, you must continue to share the same place indefinitely? Absolutely not. Remaining in the marital residence until issues of custody, alimony, and property have at least been temporarily resolved can avoid or minimize the legal ramifications of moving out. You can and should take steps to consult with an attorney, and to legally separate in a way that does not constitute abandonment or raise other problematic issues, as we'll discuss shortly.

FINANCIAL FACTORS

There are also financial consequences to making the decision to move out that are important to be aware of. Moving out of the home may reduce some of the day-to-day conflicts that arise between you and your spouse, but the truth is that moving out can be financially and legally stressful in ways that you might not anticipate. Financially, spouses will now have to confront the reality of paying for not one living space, but two, and all of the other expenses that come along with having two homes. Issues of who will pay for child-related costs, medical bills, and other day-to-day expenditures can also become hotly debated matters.

As a result, it is of critical importance that both spouses have a thorough understanding of the family's financial situation before making a decision to move out. It will be important to look carefully at income, assets, and debts, and to make careful documentation accordingly. When considering a move of this nature, you'll need to gather all of your important financial information, not only to determine how much you will be able to afford for a second residence, including all related bills and utilities, but also in order to estimate how much you'll likely be required to pay in alimony, child support, and other life expenses in addition to funding a second residence.

Consider thinking through the following factors before making the decision to move out, in order to have a realistic sense of the financial impact of your decision:

BEGIN TRACKING YOUR EXPENSES

Consider all regular expenses like monthly bills, utility payments, medical and insurance bills, tuition payments, child care fees, home maintenance expenses, activity fees, and anything else you might regularly spend money on. Most of this information can be located on your credit and bank account statements. If you're not already doing this, tracking will give you a good idea of what you spend in an average month and help you to budget for future payments.

LOOK BEYOND THE NORMAL MONTHLY EXPENSES

While tracking your regular monthly expenses is important, it can also be helpful to track non-routine expenses. These expenses may include things like vacations, home repairs, gift-giving and charitable contributions because these expenses can be significant throughout the year, even though they might not recur on a monthly basis. Being aware and informed about what these expenses are and how often they arise will also be helpful to build a post-divorce budget, and can eventually serve as helpful information for your attorney, and potentially for a judge as they work to decide how to best divide property, and to determine alimony and child support payments.

AVOID UNNECESSARY EXPENDITURES

Even for someone with a good deal of disposable income, this is not the time to increase your standard of living. The spouse who is contemplating leaving should not start purchasing expensive furniture, vacations, or vehicles. They should spend what is necessary and no more. Divorce puts a financial strain on everyone, and resources are best managed conservatively.

It's wise to consider all of these factors prior to moving out, in order to ensure that you'll be able to adequately cover all anticipated expenditures, many of which will be lasting from the date you move out until far into the foreseeable future.



CO-PARENTING CONSIDERATIONS

Without question, while moving out certainly affects each spouse, it may possibly have an even more significant effect on the children. Major life changes can be difficult for everyone, but children often have greater difficulty handling the wide range of emotions that such change can bring about. As parents contemplate one spouse leaving the marital home, they should also consider how they will best help their children through this transition.

There is no specific formula for how to best prepare children for these changes. The truth is that you know your own children best, and as a parent, you likely already understand very well that all children have different temperaments and different levels of understanding and coping skills. You could enlist the help of family members and friends who also care for the children, as well as professional help from a therapist, if necessary. The most important thing is to keep the well-being of the children priority.

Moving out of the marital home will likely increase the pressure for quick decisions on a custody arrangement. Whether formal or informal, initial custody arrangements agreed upon by both parties are often the arrangements that end up becoming finalized.

Additionally, if a parent is contemplating moving out of the marital home in a situation where children are involved, it's important to consider which new residence will be appropriate for the children. For example, if you have two children and you select a one-bedroom apartment that is forty-five minutes away from their school, friends, and activities, you are probably not doing yourself any favors when it comes to an ultimate custody determination. It's important to look for and find a residence that will be suitable for the needs of all of your children before even thinking of moving out.

For all of these reasons, you should think through the long-term effects of moving out and act not only in your immediate best interest, but also in the best interests of your children.

DITCH THE DATING

While this seems to be fairly simple advice, it is often ignored. Stated simply, the spouse who is planning to leave the marital home should not date at all before moving out. There are a number of legal reasons for this, including impacting the amount of alimony that is received or paid, and the possibility of alienation of affection lawsuits being filed by third parties. Adultery, though rarely prosecuted, is still considered a criminal act in North Carolina. If you have further questions about the legal ramifications of dating before moving out of the marital home, we would be glad to discuss those concerns with you in a consultation.







DRAFTING A LEGAL SEPARATION

As we noted earlier in this article, if you are truly certain that divorce is the best path forward for your family, you will want to consider a separation and accompanying separation agreement first. The concept of legal separation varies from state to state, as is true of many legal matters.

According to North Carolina law, the separation of a married couple takes place when they move into separate residences with the intent of living separate and apart, and with no intention to resume the marriage. In order to qualify for an absolute divorce in North Carolina, the parties must be legally separated for at least one year and a day. After having been separated for that period of time, the parties may then officially file an absolute divorce. As a general rule, you cannot live in the same residence and be legally separated. If you both genuinely wish to proceed with the divorce in the most expeditious manner possible, living in separate residences with separate mailing addresses is highly advised.

Once you have decided that separation is the best option, it's time to create a separation agreement. This type of agreement is a legally binding, written contract between the spouses that will address the issues that are likely to arise in a separation or eventual divorce. This might include custody of the children, property division, support payments, and any other matters of importance to the parties.

You can include many details in a separation agreement, but both spouses must mutually agree on the terms associated with them. Matters that can be addressed include, but are not limited to:

 PROPERTY AND DEBT DIVISION	 HEALTH INSURANCE MATTERS	 DIVISION OF TAX OBLIGATIONS
 CHILD CUSTODY, SUPPORT, AND VISITATION	 TERMINATION OF CERTAIN MARITAL RIGHTS	 POST-SEPARATION SUPPORT AND ALIMONY

Because a separation agreement is legally binding, it is always wise to consult an attorney to prepare and draft the separation agreement before someone actually moves out.

CALL THE LAW OFFICE OF DUSTIN MCCRARY TODAY

Moving out of the marital home is more than just finding a new residence. It's a significant life decision, and it is best to thoroughly consider all aspects and ramifications beforehand. Anticipating the potential challenges and realities of moving out prior to doing so is critical to ensure that you are making a decision you won't later regret.

If you are still feeling unsure as to the legal and financial ramifications of a decision of this nature, feel free to call us. Our team is glad to discuss your case with you and find out how we may best be of help going forward. We look forward to speaking with you soon.

THE LAW OFFICE OF
DUSTIN S. MCCRARY PLLC
Divorce & Family Law

STATESVILLE

117 Kelly St
Statesville, NC 28677
(704) 380-0456

HICKORY

1410 4th St Dr NW, Suite 102
Hickory, NC 28601
(828) 459-6464

LENOIR

118 Main St NW, Suite 200
Lenoir, NC, 28645
(828) 221-2999

MOORESVILLE

106 Langtree Village Drive, Suite 301
 Mooresville, NC. 28117
(704) 593-6688

Where clients are neighbors, not numbers

mccrarylaw.com.com